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ZAMPERINI AIRFIELD PRESERVATION SOCIETY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ZAMPERINI AIRFIELD
PRESERVATION SOCIETY, a
California unincorporated association,

Plaintiff/Petitioner,

v.

CITY OF TORRANCE, a California
municipal corporation and ROES 1
through 100,

Defendants/Respondents.

CASE NO.: 2:24-cv-04538-CBM-JPR

**PLAINTIFF/PETITIONER'S
OPENING BRIEF IN SUPPORT OF
WRIT OF MANDATE**

Date: July 22, 2025

Time: 10:00 a.m.

Place: Department 8D

Judge: Hon. Consuelo B. Marshall

Petition Filed: April 22, 2024

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1 Plaintiff and Petitioner Zamperini Airfield Preservation Society (“ZAPS”)
2 hereby submits its Opening Brief in Support of Motion for Writ of Mandate (“Motion”)
3 against Defendant and Respondent City of Torrance (“City”).

4 **I. INTRODUCTION**

5 “Planes do not wander about in the sky like vagrant clouds. They move
6 only by federal permission, subject to federal inspection, in the hands of
7 federally certified personnel and under an intricate system of federal
8 commands.”

9 *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944). Yet, the City is getting
10 in the way of that federal permission by adopting a scheme of ordinances aimed at
11 regulating the number of aircraft flying over Torrance neighborhoods. One of these
12 illicit ordinances is Ordinance No. 3930, “Touch (and Stop) and Go, Full Stop-Taxi
13 Back and Low Approaches” (“Touch & Go Ordinance”) which prohibits four specific
14 flight training operations at the Torrance Municipal Airport (“Airport”). These
15 prohibitions are precisely designed to, impermissibly, reduce air traffic over Torrance
16 neighborhoods, not to limit noise emanating from the Airport. As stated by the City’s
17 Council Member Mattucci: “[U]ltimately, we want to reduce the number of flights, one
18 way or another....” AR02545.

19 When these training operations were allowed, aircraft would remain in the
20 overhead flight pattern, which, ZAPS for current purposes does not dispute, increases
21 the amount of aircraft overflight of those neighborhoods beneath the pattern. But a
22 pattern is a Federal Aviation Administration (“FAA”) designated flight path around
23 airports to facilitate the safe arrival, departure, and training operations. The City does
24 not, and did not, define or control the North and South Patterns at the Airport—the FAA
25 did. Instead of seeking resolution of neighborhood complaints about overflight with the
26 FAA, the City has engaged in vigilantism by adopting the Touch & Go Ordinance to
27 reduce the overflight air traffic without the FAA’s permission. In other words, the City
28 has swatted down air traffic over Torrance neighborhoods with the stroke of a pen. The
City claims that it is simply regulating noise at the Airport under its proprietor rights in

1 owning the Airport, but this is subterfuge. The City’s veiled goal is not to limit airport
2 noise (even assuming that goal is within its powers), but to reduce the number and
3 frequency of aircraft overflight, over which it definitively has no power.

4 This is not new. Beginning decades ago, the City declared war on aircraft by
5 engaging in incremental acts which have restricted flight operations over time by
6 chiseling away at flight operations of aircraft by various means. Initially, the City
7 impermissibly banned early left turns in 1958. Then it purportedly limited the number
8 of flight schools in 1977. In recent years, it escalated its campaign against aircraft with
9 adopting a surge of impermissible restrictions on aircraft flight operations, which
10 culminated in the City’s imposition of landing fees, and ultimately with the adoption of
11 the Touch & Go Ordinance. In doing so, the City intentionally thumbs its nose at federal
12 authority and unlawfully intrudes into the government’s jurisdiction. Although ZAPS
13 is only challenging the Touch & Go Ordinance, it does not concede that the legitimacy
14 of any of these other measures, some of which are actively being challenged by others.

15 The United States Government has exclusive sovereignty over the nation’s
16 airspace, which includes all of the sky. A subset of airspace, is navigable airspace,
17 which is “airspace needed to ensure safety in the takeoff and landing of aircraft” and
18 includes areas above 1,000 feet in congested areas (500 in uncongested areas) and areas
19 necessary for takeoff and landing and includes the patterns at the Airport.

20 Federal authority to regulate aircraft and navigable airspace is very broad and a
21 municipality, like the City, is very limited in its ability to regulate aircraft. The City is
22 prohibited from regulating broad areas such as air safety or flight operations. Its ability
23 to regulate aircraft is severely limited to just certain noise-based and environment
24 restrictions, which are themselves constrained; for example, for certain aircraft, any
25 local restrictions are subject to the strict requirements of the Airport Noise and Capacity
26 Act (“ANCA”). 49 U.S.C. §§ 47521 *et seq.* As the Airport owner, the City does have
27 proprietor rights that allow it to make certain ground-based noise restrictions that are
28 reasonable, nonarbitrary, and nondiscriminatory. But this authority does not extend to

1 aircraft entering or exiting the flight pattern through takeoff and landing. Yet, the Touch
2 & Go Ordinance exerts unlawful regulation over the Airport patterns. Further, the
3 ordinance is preempted under conflict preemption because it conflicts with ANCA by
4 impermissibly regulating certain types of aircraft without the City having complied with
5 ANCA's procedural requirements.

6 As shown by the multitude of public comments, the Touch & Go Ordinance was
7 not adopted to reduce noise emanating from ground level at the Airport, but for the
8 improper and veiled purpose of limiting overflights. Neither Congress nor FAA has
9 ceded federal authority to regulate, directly or indirectly, aircraft overflight in the
10 patterns or airport takeoffs and landings in the navigable airspace to the state or local
11 levels.

12 Although the City may want to limit flights to quell neighbors' complaints, it is
13 prohibited from doing so under well-established law. Only the federal government can
14 regulate overflights, and the City taking it upon itself to prohibit these flight maneuvers
15 as a means of reducing overflights cannot stand. Accordingly, ZAPS requests this Court
16 to grant a writ of mandate, declare the Touch & Go Ordinance invalid, and enjoin the
17 City from regulating aircraft overflight through the Touch & Go Ordinance.

18 **II. STATEMENT OF FACTS**

19 **A. Torrance Municipal Airport**

20 On March 5, 1948, the United States executed a Quitclaim Deed to the City for a
21 portion of the Airport, referred to as the Lomita Flight Strip. AR00001. As part of this
22 Quitclaim Deed, the City was required to not "limit its usefulness as an airport."
23 AR00005. On March 22, 1956, the United States and the City entered into a deed
24 conveying the "lands or interests in lands" upon which the Airport sits to the City, on
25 the condition that the City "will maintain the project constructed thereon." AR00009.
26 This deed was accepted by the City on May 1, 1956. AR00015. The Airport is
27 commonly known as Zamperini Field or Torrance Municipal Airport with the
28 International Civil Aviation Organization identifier of KTOA. A variety of jet and

1 propeller aircraft use the Airport with stage ratings from stage 2 to stage 4, as well as
2 aircraft without stage ratings.¹ Declaration of Ivan Arnold (“Decl. Arnold”), at ¶ 9.

3 **B. ZAPS and Its Members**

4 ZAPS is a California Unincorporated Association made up of Airport user
5 members, many of whom have aircraft that are subject to the Touch & Go Ordinance.
6 Decl. Arnold, at ¶¶ 1-8; Declaration of James Henry Gates (“Decl. Gates”), at ¶¶ 1-8.
7 One member of ZAPS operates a Saab SF-340A aircraft, which has a Stage 3 rating
8 from the FAA, and desires to perform those operations prohibited by the Touch & Go
9 Ordinance at the Airport. Decl. Arnold, at ¶¶ 5, 9.

10 **C. The City’s Multi-Front Attack on Flying Aircraft**

11 The City has unleashed a multi-front attack on flying aircraft by imposing
12 comprehensive restrictions over the years, which included a 6-flight school limitation,
13 instituting landing fees, and banning touch and goes, stop and goes, taxi backs, and low
14 approaches. In regard to the former, on October 25, 1977, under Subject 10, Airport
15 Noise Ordinance, the City Council adopted Resolution No. 77-215, a Resolution of the
16 City Council of the City of Torrance Reaffirming a Previously Adopted Policy to
17 Institute a Program of Aircraft Noise Abatement and Directing the City Manager and
18 Other City Officials to Take Certain Steps to Implement Such Program. AR00022. The
19 City sought to limit the volume of flights from the Airport to “a level compatible with
20 community tranquility...” *Id.* Resolution No. 77-215 limited the number of flight
21 schools to the current six operating and to “seek alternative training fields for training
22 flights, particularly touch and go and stop and go operations.” AR00024.

23 Over the years, the City increased its efforts to restrict aircraft overflights:

- 24 • In November 1981, the City published the Torrance Municipal Airport Aircraft
25

26
27 ¹ The “stage” rating of an aircraft is based on physical characteristics and noise levels.
28 *See* 14 C.F.R. § 36.1(e)-(h). For civil aircraft, there are five stages identified, with
Stage 1 being the loudest and Stage 5 being the quietest. Most stage-rated aircraft are
jets and helicopters; most piston-powered aircraft are not assigned stage ratings.

Noise Control and Land Use Compatibility Study, which stated the City’s intent to “initiate a comprehensive aircraft noise abatement program”. AR00165, AR00189.

- On December 14, 2021, the City Council considered and awarded a \$627,078 contract for an airport noise monitoring system based on numerous community complaints about flying aircraft from flight schools. AR01694-01726.
- On March 29, 2022, City Council listened to discussions on the Torrance Municipal Code section 51.2.3(e)’s previously enacted but unlawful prohibition on early left turns and the number of flights due to the flight schools at the Airport, which included numerous comments complaining about aircraft flying over homes and insisting that the City do something about it. AR01976-79, AR02555-77.
- On April 12, 2023, the City’s Transportation Committee was presented with options to provide direction on reducing flights, which included imposing landing fees. AR04375-077, AR04381-90.
- On July 25, 2023, the City Council discussed how to best mitigate the noise and frequency of flights in the areas surrounding the Airport due to neighbor complaints about aircraft overflight. AR06683-89, AR06893-97, AR06920-7064. It passed a motion to modify the hours and days for allowed touch and goes. AR06897. For that hearing, the City’s Staff Report stated, “The two general issues with noise impacts on the communities surrounding Torrance Airport are the high frequency of flights generated by flight schools, and the low flight altitude of aircraft turning to the southwest over noise-sensitive neighborhoods immediately after takeoff.” AR06688.
- On September 12, 2023, the City Council considered banning touch and goes, hearing additional neighbor complaints about the noise from frequent aircraft overflight. AR07065-88.
- On October 17, 2023, City Council once again considered banning touch and

1 goes, hearing even more community complaints about noise from aircraft
2 overflight. AR07786-87.

- 3 • On November 28, 2023, City Council presented language of a proposed
4 ordinance on “Landing Fees Ordinance” and heard neighbor complaints about
5 the noise from frequent overflight. AR07993-97, AR07999-8001, AR08003-9,
6 AR08011-17, AR08019-22.
- 7 • On December 12, 2023, City Council adopted the Landing Fees Ordinance, as
8 Ordinance No. 3927, which amended Torrance Municipal Code sections 51.2.30,
9 “Definition of Revenue Operations” and 51.2.31, “Fee for Revenue Operations”,
10 and repealed section 51.2.32, “Refusal for Clearance.” AR08556, AR08558-60.
- 11 • On December 19, 2023, City Council adopted Urgency Ordinance No. 3929,
12 which amended the Torrance Municipal Code to limit business licenses for flight
13 schools to only six licenses, which went into effect immediately. AR08650-54.
- 14 • On January 9, 2024, City Council adopted Ordinance No. 3929, which was a non-
15 urgency version of Ordinance No. 3929, which also limit business licenses for
16 flight schools to only six licenses. AR08909-11.
- 17 • On January 11, 2024, the Landing Fee Ordinance went into effect. AR08578.
- 18 • On January 23, 2024, City Council introduced and approved the Touch & Go
19 Ordinance based on neighbor complaints of frequent and repetitive overflight.
20 AR08927-31, AR08966-7, AR09032.
- 21 • On February 6, 2024, City Council adopted and passed the Touch & Go
22 Ordinance, as Ordinance No. 3930, which amended Article 5 “Touch (and Stop)
23 and Go, Full Stop-Taxi Back and Low Approaches” of Chapter 1, Division 5 of
24 the Torrance Municipal Code. Thereafter, City promulgated Torrance Municipal
25 Code sections 51.5.1 through 51.5.7 to implement Ordinance No. 3930.
26 AR09271-2.
- 27 • On March 8, 2024, the Touch & Go Ordinance went into effect. AR09213-4.

28 ///

D. The FAA’s Admonitions Against the City for its Prior Flight Restrictions

In 2020 and 2022, the FAA admonished the City’s restriction on aircraft flight. AR10065-67, AR10082-84. The FAA stated that the City cannot regulate flight; only the FAA can. *Id.* These admonitions related to the City’s ban on early left turns in Torrance Municipal Code section 51.2.3(e) (“Left Turn Ban”), but the principles are of general applicability. AR05805-08; AR05816-18.

In its February 18, 2020 letter, the FAA stated that Left Turn Ban is unenforceable. The FAA explained:

“Because the Torrance code provision applies to aircraft in flight, it is not consistent with the Federal statutory and regulatory framework described above. Enforcement of the provision would be at odds with various court opinions. As noted, state and local governments lack the authority to regulate airspace use, management and efficiency; air traffic control; and aircraft noise at its source. Federal courts have found that a navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”

AR10067. The City responded by claiming its Left Turn Ban was “grandfathered” in. AR05812-13. However, in a subsequent letter dated December 16, 2022, the FAA flatly rejected the City’s claim. AR10083. The FAA unequivocally told the City that it was subject to ANCA and could not add additional flight limits not compliant with the ANCA – which would prohibit the restriction now at issue. Despite this admonition, the City ignored the FAA and adopted the Touch & Go Ordinance to reduce aircraft overflight.

E. The Touch & Go Ordinance

The Touch & Go Ordinance prohibited and restricted certain flight maneuvers that are frequently used in training.² These included:

- Touch and Go: “an action by an aircraft consisting of a landing and departure on

² The FAA in its Airport Compliance Manual - Order 5190.6B - Change 3 and Aeronautical Information Manual (AIM) Basic (“AIM”) acknowledges that touch and goes are legitimate flight maneuvers. AR07383; AIM 4-3-23.

1 a runway without stopping or exiting the runway.” AR09213, AR09271.

2 • Stop and Go: “an action by an aircraft consisting of a landing followed by a

3 complete stop on the runway and a takeoff from that point.” *Id.*

4 • Full Stop-Taxi Back: “an action by an aircraft consisting of a landing on any

5 runway followed by exiting the runway, with or without a complete stop, and

6 returning directly to the approach end of any runway for a subsequent take-off.”

7 *Id.*

8 • Low Approach: “an action by an aircraft consisting of an approach over the

9 Airport for a landing where the pilot intentionally does not make contact with the

10 runway.” *Id.*

11 The Touch & Go Ordinance prohibits touch-and-go and stop-and-go maneuvers at the

12 Airport. AR09271. It also restricted days and times for which low approach and full

13 stop taxi-back maneuvers could be performed to only non-holiday, weekdays between

14 the hours of 10:00 a.m. and 6:00 p.m. AR09272. The touch-and-go, stop-and-go, low

15 approach, and full stop taxi-back maneuvers are collectively referred to as “Flight

16 Maneuvers”. As defined by the ordinance, an aircraft initiating a low approach

17 maneuver never leaves the airspace or otherwise make contact with the runway and the

18 full stop-taxi back is the only flight maneuver that involves taxiing off the runway,

19 before promptly taking off again.

20 **III. PROCEDURAL HISTORY**

21 ZAPS has exhausted its administrative remedies prior to filing suit. Members and

22 entities that were, and are, members of ZAPS objected to the City’s adoption of

23 ordinances designed to regulate flying aircraft that culminated in the Touch & Go

24 Ordinance. Decl. Gates ¶ 9; AR01990, AR02013, AR02016, AR02102, AR03102,

25 AR12735, AR06401, AR06457, AR07083, AR07084, AR07927, AR08987, AR08950,

26 AR08927, AR08935, AR09010, AR09012, AR08947.

27 On April 22, 2024, ZAPS filed a Verified Petition for Writs challenging the

28 validity of the Touch & Go Ordinance (“Petition”) and commenced this action in the

1 Superior Court of the State of California, County of Los Angeles entitled *Zamperini*
2 *Airfield Preservation Society v. City of Torrence*, as Case Number 24STCP01278.

3 On May, 31, 2024, the City filed a Notice of Removal based on federal question
4 jurisdiction. Dkt. 1. ZAPS did not contest the removal. On November 9, 2024, the City
5 answered the Petition. Dkt. 14. On February 6, 2025, the City certified the
6 Administrative Record for this action. Dkt. 22.

7 **IV. OTHER CHALLENGES TO THE CITY'S ACTIONS**

8 ZAPS is not the only entity challenging the City's campaign against aircraft
9 overflight. On March 8, 2024, the Torrance Airport Association, a local chapter of the
10 California Pilots Association, filed a Verified Petition for Writ of Mandate challenging
11 the validity of the City's Landing Fees Ordinance in the Superior Court of the State of
12 California, County of Los Angeles entitled *Torrance Airport Association, Chapter of*
13 *California Pilots Association v. City of Torrance*, as Case Number 24STCP00729.

14 On April 3, 2024, the City also filed a Notice of Removal based on federal
15 question jurisdiction, which removed the case to the United States District Court,
16 Central District of California as Case Number 2:24-cv-02692-JFW-MBK. That matter
17 is still pending.

18 **V. JURISDICTION AND VENUE**

19 The Court has jurisdiction to hear the Motion based on 28 U.S.C. § 1331. "A
20 plaintiff who seeks injunctive relief from state regulation, on the ground that such
21 regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause
22 of the Constitution, must prevail, thus presents a federal question which the federal
23 courts have jurisdiction under 28 U.S.C. § 1331 to resolve." *Shaw v. Delta Air Lines,*
24 *Inc.*, 463 U.S. 85, 96, (1983). The Court also has supplemental jurisdiction to hear
25 additional claims that are related to an original claim, even if the court would not
26 normally have jurisdiction over those additional claims. 28 U.S.C. § 1367. That
27 supplemental jurisdiction extends to ZAPS's writ of mandate claims under California
28 Code of Civil Procedure sections 1085 and 1094.5. "A grant of supplemental

jurisdiction of a California mandamus action is not prohibited.” *Fresno Unified Sch. Dist. v. K.U. ex rel. A.D.U.*, 980 F. Supp. 2d 1160, 1184 (E.D. Cal. 2013), citing *Manufactured Home Communities, Inc. v. City of San Jose*, 420 F.3d 1022, 1027 n. 6 (9th Cir.2005). Where a mandamus action seeks to enforce a federal right, federal courts may retain supplemental jurisdiction over a state writ petition. *Tulare Loc. Health Care Dist. v. California Dep’t of Health Care Servs.*, 328 F. Supp. 3d 988, 990 (N.D. Cal. 2018) (noting that district court denied motion to remand petition for writ of mandate under § 1085 where petition “raised a number of issues of federal law”). Even if there is no private right of enforcement, under the doctrine of *Ex Parte Young*, parties are not barred from invoking federal jurisdiction when “they do so not to enforce the federal law themselves, but to preclude a municipal entity from subjecting them to local laws enacted in violation of federal requirements.” *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133, 146 (2d Cir. 2016), citing *Air Transp. Ass’n of Am., Inc. v. Cuomo*, 520 F.3d 218, 222 (2d Cir. 2008) (pre-enforcement challenge to pre-empted state law presented no “barriers to justiciability”).

Venue is proper in this Court per California Code of Civil Procedure section 395, subdivision (a) as the acts and omissions complained of herein occurred, and the property affected by those acts is located in Los Angeles County.

ZAPS is an aggrieved person, as a person who through a representative, appeared at the public meetings and hearings of the City Council and objected to the City’s adoption of the Touch & Go Ordinance and promulgation of its implementing Torrance Municipal Code sections 51.5.1 through 51.5.7. Decl. Gates ¶ 9. An ordinance is a legislative act that is reviewable by writ of mandate. *Yes in My Back Yard v. City of Culver City*, 96 Cal.App.5th 1103, 1112-13 (2023).

This action is commenced within the time limits imposed for this action under California Code of Civil Procedure sections 1085 and 1094.5.

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VI. STANDARD OF REVIEW

ZAPS seeks adjudication of a federal question under applicable state law and remedy for a peremptory writ ordering the City to vacate and repeal the Touch & Go Ordinance. There is no direct analog or corresponding statute for judicial review of a municipality's actions under federal law. Under California law, "A court will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support. A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." *Cal. Hotel & Motel Assn. v. Indus. Welfare Com.*, 25 Cal.3d 200, 212 (1979). This is analogous to judicial review of agency actions under 5 U.S.C. § 706, which permits the court to:

"[H]old unlawful and set aside agency action, findings, and conclusions found to be—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

5 U.S.C. § 706(b). The Court's review of the City's actions should include the additional considerations under this section, including subdivisions (A) through (E).

This Court can enjoin the Touch & Go Ordinance through its authority under the All Writs Act. 28 U.S.C. § 1651(a). Moreover, federal courts can preemptively enjoin state acts. "The Supreme Court has 'long recognized' that where 'individual[s] claim[] federal law immunizes [them] from state regulation, the court may issue an injunction

1 upon finding the state regulatory actions preempted.” *Friends of the E. Hampton*
2 *Airport, Inc.*, 841 F.3d at 144, quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575
3 U.S. 320, 326 (2015). The “Eleventh Amendment does not bar federal courts from
4 enjoining state officials from taking official action claimed to violate federal law. Since
5 then, the Supreme Court has consistently recognized federal jurisdiction over
6 declaratory- and injunctive-relief actions to prohibit the enforcement of state or
7 municipal orders alleged to violate federal law.” *Id.*, citing numerous Supreme Court
8 cases.

9 Furthermore, since there is no direct analog under federal law for the adjudication
10 of a claim for writ of mandate, the Court should treat ZAPS’s claims in its Petition as
11 seeking declaratory judgment. “In a case of actual controversy within its jurisdiction ...
12 any court of the United States ... may declare the rights and other legal relations of any
13 interested party seeking such declaration, whether or not further relief is or could be
14 sought.” 28 U.S.C. § 2201(a); *Calderon v. Ashmus*, 523 U.S. 740, 745-46 (1998);
15 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). A private party may
16 seek declaratory and injunctive relief against state action on the basis of federal
17 preemption where a federal right exists. *Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920,
18 929 (9th Cir. 2003). “Further necessary or proper relief based on a declaratory judgment
19 or decree may be granted, after reasonable notice and hearing, against any adverse party
20 whose rights have been determined by such judgment.” 28 U.S.C. § 2202. These
21 authorize this Court to adjudicate and issue the same judgment and remedy ZAPS seeks
22 under its Petition. ZAPS has provided reasonable notice, both through its Petition and
23 through the Motion.

24 **VII. LEGAL ARGUMENT**

25 The City, though the City Council, adopted the Touch & Go Ordinance for the
26 sole improper purpose of restraining the frequency of aircraft flight over neighborhoods
27 near the Airport. The City was exclusively motivated by the vast amount of neighbor
28 complaints about the frequency of overflights. However, the City cannot adopt an

1 ordinance that affects aircraft in flight after takeoff or before landing. It must comply
2 with the law, in this instance, federal law.

3 The Touch & Go Ordinance is void because it was for the improper purpose to
4 limit aircraft overflight, which impermissibly infringes on the federal government's
5 exclusive sovereignty over the navigable airspace and is preempted because it regulates
6 the fields of flight operations and air safety for which Congress and the FAA occupy
7 those fields. Even if the Touch & Go Ordinance is not void under field preemption, it
8 would be void under conflict preemption because it directly conflicts with ANCA. The
9 City failed to comply with the procedures set forth in ANCA and did not have any legal
10 basis for its failure to comply. Although the City is permitted to enact noise restrictions
11 at the Airport per its proprietor's rights, those restrictions do not extend to overflight.
12 Clearly, the City has no basis for its ban and restrictions on the flight maneuvers.
13 Therefore, the Court should invalidate the Touch & Go Ordinance.

14 **A. The Federal Government's "Exclusive Sovereignty" Over the**
15 **County's Airspace Categorically Prevents the City from Enforcing**
16 **the Touch & Go Ordinance**

17 The Supremacy Clause states, "[The] Constitution, and the Laws of the United
18 States which shall be made in Pursuance thereof...shall be the supreme Law of the
19 Land..." U.S. Const. art. VI, cl. 2. From this authority, Congress provided for the
20 expansive authority for the federal government to regulate airspace and aircraft
21 transiting it. "The United States Government has exclusive sovereignty of airspace of
22 the United States." 49 U.S.C. § 40103(a) ("Section 40103"). This is unique compared
23 to other federal law in that it uses the express language of "exclusive sovereignty",
24 which is notably absent from most legislation.

25 Since 1926, under federal law, "the United States has 'complete and exclusive
26 national sovereignty in the air space' over this country." *United States v. Causby*, 328
27 U.S. 256, 260 (1946), citing the Air Commerce Act of 1926, 44 Stat. 568, 49 U.S.C. §
28 171 *et seq.*, as amended by the Civil Aeronautics Act of 1938, 52 Stat. 973, 49 U.S.C.

1 § 401 *et seq.* “With the passage of the Federal Aviation Act of 1958, 49 U.S.C. § 1301
2 *et seq.*, Congress expressed the view that the control of aviation should rest exclusively
3 in the hands of the federal government.” *Kohr v. Allegheny Airlines, Inc.*, 504 F.2d 400,
4 404 (7th Cir. 1974). As stated by the Ninth Circuit, “We think the federal power to
5 regulate airspace is as complete and as valid as the federal power, to the extent it rests
6 upon the commerce clause, to regulate navigable waters.” *United States v. Helsley*, 615
7 F.2d 784, 786 (9th Cir. 1979). The Ninth Circuit elaborated:

8 “In reporting the bill which became the Air Commerce Act, the
9 Congress said: [¶] The declaration of what constitutes navigable air
10 space is an exercise of the same source of power, the interstate
11 commerce clause, as that under which Congress has long declared in
12 many acts what constitutes navigable or nonnavigable waters. The
13 public right of flight in the navigable air space owes its source to the
14 same constitutional basis which, under decisions of the Supreme Court,
15 has given rise to a public easement of navigation in the navigable waters
16 of the United States, regardless of the ownership of the adjacent or
17 subjacent soil.”

18 *Id.* at 786, n. 1. Navigable airspace is even more paramount. “Air is an element in which
19 to navigate is even more inevitably federalized by the commerce clause than in
20 navigable water.” *Kohr* at 404.

21 “The explicit objective of the [Federal Aviation Act] is to foster the
22 development of air commerce. 49 U.S.C. § 1346. To that end, it has
23 been recognized that the principal purpose of the [Federal Aviation] Act
24 is to create one unified system of flight rules and to centralize in the
25 Administrator of the [FAA] the power to promulgate rules for the safe
26 and efficient use of the country’s airspace.”

27 *Kohr* at 404. The court found a “predominant, indeed almost exclusive, interest of the
28 federal government in regulating the affairs of the nation’s airways.” *Id.* at 403.

In 1994, as part of recodification, Congress shortened the phrasing of “complete
and exclusive national sovereignty in the air space” to the more concise “exclusive
sovereignty”. And to carry out that power, Congress directed, the FAA to “develop
plans and policy for the use of the navigable airspace and assign by regulation or order
the use of the airspace necessary to ensure the safety of aircraft and the efficient use of
airspace.” 49 U.S.C. § 40103(b)(2).

1 These authorities together with Section 40103 are essentially preemption plus
2 with the full weight and authority of the Supremacy Clause behind it that is only limited
3 to the extent the federal government has ceded or divested itself of that broad authority.
4 This authority applies to the “navigable airspace”, which federal law defines as
5 “airspace needed to ensure safety in the takeoff and landing of aircraft.” 49 U.S.C. §
6 40102(a)(30). The navigable airspace includes areas above 1,000 and 500 feet in
7 congested areas and uncongested areas, respectively, and areas necessary for take-off
8 and landing. 49 U.S.C. § 40102(a)(32); 14 C.F.R. § 91.119.

9 The Touch & Go Ordinance impermissibly intrudes into the navigable airspace.
10 It expressly regulates “areas necessary for take-off and landing” based on an improper
11 intent to regulate aircraft flight.

12 1. The Federal Government Maintains Its Sovereignty Over Flight
13 Maneuvers that are Impermissibly Banned and Restricted By the
14 Touch & Go Ordinance

15 Although the federal government has ceded some of its “complete” authority to
16 regulate navigable airspace, not involved here, it still retains the original sovereignty,
17 which was conferred in full onto the FAA to administer. The ceding of sovereignty over
18 time by statutes that divest control is akin to “inherent sovereignty” of Indian tribes.

19 Indian tribes have inherent sovereignty that can be diminished or divested
20 through its own acts that cede its sovereignty. Indian tribes, though incorporation into
21 the United States through treaties, lost much of their inherent sovereignty. *Montana v.*
22 *U.S.*, 450 U.S. 544, 563(1981). Like the inherent sovereignty retained by the Indian
23 tribes, the federal government retains its exclusive sovereignty over the navigable
24 airspace. Only the specific sovereignty that has been ceded by the federal government,
25 either expressly or implicitly, limits its sovereignty. The federal government has not
26 ceded the authority to regulate and prohibit the banned flight maneuvers.

27 The authority of municipalities, like the City, is even more diminished. “[C]ities
28 are not sovereign entities. Rather, they have been traditionally regarded as subordinate

1 governmental instrumentalities created by the State to assist in the carrying out of state
2 governmental functions.” *U.S. v. Wheeler*, 435 U.S. 313, 320 (1978), quotations and
3 citations omitted, other holdings superseded by statute. A city is nothing more than “an
4 agency of the State.” *Williams v. Eggleston*, 170 U.S. 304, 310 (1898).

5 The City, which does not have its own sovereignty, is even more limited in ability
6 to regulate navigable airspace.

7 “The moment a ship taxis onto a runway it is caught up in an elaborate
8 and detailed system of controls. It takes off only by instruction from the
9 control tower, it travels on prescribed beams, it may be diverted from
10 its intended landing, and it obeys signals and orders. Its privileges,
rights, and protection, so far as transit is concerned, it owes to the
Federal Government alone and not to any state government.”

11 *Nw. Airlines v. State of Minnesota*, 322 U.S. 292, 303 (1944). To the extent an aspect
12 of the federal government’s ability to regulate navigable airspace is not expressly ceded
13 to the states, any attempt by a state or local municipality to regulate it is preempted
14 based on the express exclusive sovereignty provision of Section 40103. The federal
15 government has never ceded its sovereignty to regulate the Flight Maneuvers. As
16 discussed in Section VII.C.1. below, the federal government staunchly controls
17 regulation of flight safety and operations. In fact, the FAA’s Airport Compliance
18 Manual (“ACM”) and AIM identify the Flight Maneuvers as valid training maneuvers.
19 AR07383; AIM 4-3-23.

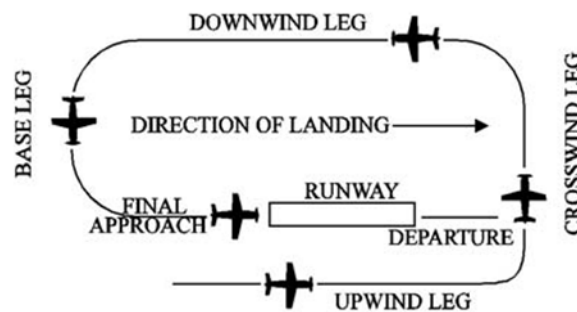
20 **B. The Touch & Go Ordinance Regulates Overflight that Follows FAA**
21 **Flight Patterns**

22 Flight pattern regulation by the FAA is extensive and is discussed in detail in the
23 FAA’s AIM. “The FAA is responsible for ensuring the safe, efficient, and secure use of
24 the Nation’s airspace, by military as well as civil aviation, for promoting safety in air
25 commerce, for encouraging and developing civil aeronautics, including new aviation
26 technology, and for supporting the requirements of national defense.” *Id.* at 17. “[The
27 AIM] is designed to provide the aviation community with basic flight information and
28 ATC procedures for use in the National Airspace System (NAS) of the United States.”

1 AIM at 17.

2 The AIM includes a section on Airport Operations, which discusses traffic
3 patterns. *See* AIM 4-3, Airport Operations. Generally: “Increased traffic congestion,
4 aircraft in climb and descent attitudes, and pilot preoccupation with cockpit duties are
5 some factors that increase the hazardous accident potential near the airport. ... This
6 section defines some rules, practices, and procedures that pilots should be familiar with
7 and adhere to for safe airport operations.” AIM 4-3-1, General.

8 The standard traffic pattern consists of six legs (all typically flown with left-hand
9 turns, unless otherwise specified): 1) Upwind leg: A flight path parallel to the landing
10 runway in the direction of landing; 2) Crosswind Leg: A flight path at right angles to
11 the landing runway off its takeoff end; 3) Downwind Leg: A flight path parallel to the
12 landing runway in the opposite direction of landing; 4) Base Leg: A flight path at right
13 angles to the landing runway off its approach end and extending from the downwind
14 leg to the intersection of the extended runway centerline; 5) Final Approach Leg: A
15 flight path in the direction of landing along the extended runway centerline from the
16 base leg to the runway; and 6) Departure Leg: Begins after takeoff and continues
17 straight ahead along the runway heading, with climbing until reaching a point at least
18 1/2 mile beyond the departure end of the runway and within 300 feet of the traffic
19 pattern altitude. AIM 4-3-3, Traffic Patterns. “However, in all instances, an appropriate
20 clearance must be received from the tower before landing.” AIM 4-3-2.b., Airports with
21 an Operating Control Tower.



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28 AIM FIG 4-3-1, Components of a Traffic Pattern.

1 The pattern altitude at the Airport is 1,100 feet Mean Sea Level (“MSL”) for
2 single-engine aircraft and 1,500 feet MSL for twin engine. AR02004. The North and
3 South patterns at the Airport are depicted in AR02191 and AR02201.

4 The AIM includes a specific “Cleared for the Option” for flight operations that
5 permits “an instructor, flight examiner or pilot the option to make a touch-and-go, low
6 approach, missed approach, stop-and-go, or full stop landing.” AIM 4-3-23, Option
7 Approach. “After ATC approval of the option, the pilot should inform ATC as soon as
8 possible of any delay on the runway during their stop-and-go or full stop landing.” *Id.*
9 “This procedure will only be used at those locations with an operational control tower
10 and will be subject to ATC approval.” *Id.* Since the Airport has an operational control
11 tower, the Touch & Go Ordinance runs afoul of the Cleared for the Option procedure.
12 These maneuvers are typical for safety training since they allow student pilots to
13 practice multiple takeoffs and landings in a short period. *See, e.g., Id.* Landing is one of
14 the most complex phases of flight, so frequent repetition improves skill and confidence.

15 The City stated it “recognizes that the [] FAA is responsible for handling all
16 aircraft flight patterns...” AR01977. However, the City’s improper motive is evidenced
17 through proceedings leading to the ordinance’s adoption. Public comment on the
18 ordinance by neighbors included:

19 “The Walteria neighborhood has been bombarded by south training
20 pattern flights from flight schools that occur so frequently and without
21 interruption, that I have lost any interest in sitting outside on my
22 balcony or in my backyard to enjoy the home I worked so hard to buy.
23 When one plane takes off from the airport to my north to begin a loop,
another is inevitably flying over Walteria in the south pattern halfway
through its loop. This cyclical pattern of training creates non-stop
droning that reverberates off the PV hillside and surrounds me on all
sides for as much as an hour at a time.”

24 AR02105. Another neighbor asked the City to “stop all training in the South Pattern and
25 enforce the City’s no-left-turn rule to keep planes away from quiet residential
26
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28

1 neighborhoods.”³ AR02118. There are hundreds of complaints about aircraft overflight.
2 In response to these complaints, the City adopted the Touch & Go Ordinance, despite
3 knowing it lacked the direct authority to do so.

4 The real reason the City adopted the ordinance was to reduce traffic in the
5 patterns. The City’s motivation to regulate aircraft traffic patterns is an improper
6 purpose. In addition to evidence that the City intended to regulate the aircraft traffic
7 pattern, there is evidence of the City’s improper purpose to regulate flight operations
8 generally throughout the Administrative Record. The City systematically restricted
9 flight operations over the years based on neighbor complaints of aircraft overflight.
10 Motivated by these numerous complaints from neighbors about the frequency of noise
11 from aircraft flying overhead, the City eventually sought to limit those flights by
12 banning and restricting legitimate and permissible flight maneuvers by, in part, adopting
13 the Touch & Go Ordinance.⁴

14 **C. The Touch & Go Ordinance Is Preempted by Federal Law**

15 Congress’ power to preempt state law derives from the Supremacy Clause of the
16 United States Constitution. *Kurns v. R.R. Friction Prod. Corp.*, 565 U.S. 625, 630
17 (2012). It states: “[t]he Constitution and laws of the United States which shall be made
18 in Pursuance thereof...shall be the supreme Law of the Land.” U.S. Const. art. VI, cl.
19 2. It “invalidates state laws that interfere with, or are contrary to, federal law.”
20 *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985), citations
21 and quotations omitted. A state law which conflicts with federal law is preempted or
22 “without effect”. *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

23 “Federal law may preempt state law in three ways. First, ‘Congress may withdraw
24

25 ³ The City’s enforcement of the Left Turn Ban was expressly prohibited by the FAA.
26 AR05805-06; AR05816-18.

27 ⁴ The Administrative Record is replete with evidence that the City Council was
28 concerned with the frequency of flights based on neighbor complaints. This intent to
limit flights is also evidenced by the City Council deliberating landing fees while
many pilots were away at a conference. AR 396.

1 specified powers from the States by enacting a statute containing an express preemption
2 provision.’ [cite] Second, ‘States are precluded from regulating conduct in a field that
3 Congress, acting within its proper authority, has determined must be regulated by its
4 exclusive governance.’ [cite] Finally, ‘state laws are preempted when they conflict with
5 federal law,’ such that ‘compliance with both federal and state regulations is a physical
6 impossibility, ... [or] the challenged state law stands as an obstacle to the
7 accomplishment and execution of the full purposes and objectives of Congress.’ [cite]”
8 *Nat’l Fed’n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 724 (9th Cir. 2016),
9 quoting *Arizona v. United States*, 567 U.S. 387 (2012). Although preemption is based
10 on the intent of Congress, that intent is “more readily inferred in the field of aviation
11 because it is an area of the law where the federal interest is dominant.” *Nat’l Fed’n of*
12 *the Blind v. United Airlines Inc.*, 813 F.3d 718, 724 (9th Cir. 2016), citing *Fidelity Fed.*
13 *Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153 (1982).

14 Even when this is no express provision of preemption, “the federal interest can
15 be so dominant that the federal system will be assumed to preclude enforcement of state
16 laws on the same subject...Or the state policy may produce a result inconsistent with
17 the objective of the federal statute.” *City of Burbank v. Lockheed Air Terminal Inc.*, 411
18 U.S. 624, 633 (1973), quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230
19 (1947). There are two types of implied preemption: field and conflict preemption.
20 *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007); *Gilstrap v. United Air*
21 *Lines, Inc.*, 709 F.3d 995, 1006 (9th Cir. 2013). Preemption under the Federal Aviation
22 Act has historically focused on field preemption, but for the Touch & Go Ordinance, it
23 is also preempted since it conflicts with ANCA.

24 1. The Touch & Go Ordinance is Preempted Because Congress Has
25 Regulated the Fields of Air Safety and Flight Operations

26 “States are precluded from regulating conduct in a field that Congress, acting
27 within its proper authority, has determined must be regulated by its exclusive
28 governance.” *Arizona v. United States*, 567 U.S. 387, 399 (2012). The intent to displace

1 state law can be “inferred from a framework of regulation so pervasive...that Congress
2 left no room for the States to supplement it or where there is a federal interest...so
3 dominant that the federal system will assume to preclude enforcement of state laws on
4 the same subject.” *Ibid*, quotations and citations omitted. This is known as field
5 preemption.

6 “The essential field preemption inquiry is whether the density and detail of
7 federal regulation merits the inference that any state regulation within the same field
8 will necessarily interfere with the federal regulatory scheme. The first step in
9 determining whether that situation exists is to delineate the pertinent regulatory field;
10 the second is to survey the scope of the federal regulation within that field.” *Nat’l Fed’n*
11 *of the Blind v. United Airlines Inc.*, 813 F.3d 718, 734 (9th Cir. 2016).

12 Congress has conferred on the FAA authority to “prescribe air traffic regulations
13 on the flight of aircraft” for “navigating...aircraft”, “protecting individuals and property
14 on the ground”, and “using the navigable airspace efficiently”. 49 U.S.C. § 40103(b)(2).
15 Moreover, the FAA shall expressly consider “controlling the use of the navigable
16 airspace and regulating civil and military operations in that airspace in the interest of
17 the safety and efficiency of both of those operations.” 49 U.S.C. § 40101(d)(4).
18 “Congress intended to invest the Administrator of the [FAA] with the authority to enact
19 exclusive air safety standards. Moreover, the Administrator has chosen to exercise this
20 authority by issuing such pervasive regulations that we can infer a preemptive intent to
21 displace all state law on the subject of air safety.” *Montalvo v. Spirit Airlines*, 508 F.3d
22 464, 472 (9th Cir. 2007).

23 “[F]ederal law occupies the entire field of aviation safety.” *Montalvo v. Spirit*
24 *Airlines*, 508 F.3d 464, 473 (9th Cir. 2007); *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127,
25 1128 (9th Cir. 2021). “Congress’ intent to displace state law is implicit in the
26 pervasiveness of the federal regulations, the dominance of the federal interest in this
27 area, and the legislative goal of establishing a single, uniform system of control over air
28 safety.” *Montalvo*, 508 F.3d at 473. Further, federal regulation of aircraft noise and

1 restrictions preempts state and local authority to regulate flight operations in order to
2 address noise concerns. *City of Burbank*, 411 U.S. at 638; *Arapahoe County Pub.*
3 *Airport Auth. v. FAA*, 242 F.3d 1213, 1220-21 (10th Cir. 2001). “Where Congress
4 occupies an entire field...even complementary state regulation is impermissible. Field
5 preemption reflects a congressional decision to foreclose any state regulation in the area,
6 even if it is parallel to federal standards.” *Arizona*, 567 U.S. at 401.

7 The Touch & Go Ordinance prohibits and restricts flight maneuvers that relate to
8 flight operations and air safety standards. Those maneuvers are specifically
9 acknowledged by the FAA as legitimate training maneuvers. AR07383; AIM 4-3-23.
10 The Administrative Record is replete with public call to ban or severely limit overflight
11 and flight in the pattern. AR08938, AR08943, AR08949, AR09014, AR09019,
12 AR09134, AR09135, AR09137, AR09165, AR09187, AR09222, AR10089, AR10093,
13 AR10102, AR10150, AR10587, AR10594, AR10603, AR10748, AR10749, AR10835,
14 AR10958, AR11359, AR11365, AR11367, AR11372, AR11392, AR11600, AR11816,
15 AR11873, AR11874, AR11900, AR12447, AR12451, AR12495, AR12575, AR12588,
16 AR12595, AR12596, AR12620, AR12623, AR12624, AR12662, AR12672, AR12679,
17 AR12682, AR12692, AR12723, AR12725, AR12729, AR12734-12737, AR12745,
18 AR12842, AR13056, AR13416, AR13456, AR13513, AR13524, AR13570, AR13639,
19 AR13662, AR14247-49, AR15608, AR15874, AR15881 (“Pattern Complaints”). There
20 are at least 294 separate instances in the Administrative Record where members of the
21 public complained about noise from overflight. AR01720, AR02005, AR02021,
22 AR02022, AR02025, AR02033, AR02084, AR02104, AR02110, AR02111, AR02121,
23 AR02124, AR02126, AR02127, AR02128, AR02133, AR02138, AR02140, AR02143,
24 AR02144, AR02148, AR02157, AR02166, AR02171, AR02227, AR02228, AR02234,
25 AR02247, AR02252, AR02255, AR02256, AR02257, AR02258, AR02260, AR02269,
26 AR02270, AR02271, AR02272, AR02274, AR02281, AR02283, AR02284, AR02286,
27 AR02291, AR02292, AR02294, AR02296, AR02310, AR02312, AR02324, AR02327,
28 AR02359, AR02368, AR02469, AR02520, AR02557, AR02566, AR02568, AR02680,

1 AR03447, AR03456, AR03475, AR03484, AR03490, AR03491, AR03492, AR03502,
2 AR03508, AR03515, AR03520, AR03571, AR03580, AR03646, AR03647, AR03649,
3 AR03653, AR03663, AR03666, AR03668, AR03669, AR03670, AR03675, AR03682,
4 AR03685, AR03686, AR03690, AR03699, AR03701, AR03708, AR03713, AR03769,
5 AR03770, AR03776, AR03789, AR03794, AR03797, AR03798, AR03799, AR03800,
6 AR03802, AR03811, AR03812, AR03813, AR03814, AR03816, AR03820, AR03823,
7 AR03825, AR03826, AR03828, AR03833, AR03834, AR03835, AR03836, AR03837,
8 AR03838, AR03852, AR03854, AR03869, AR03928, AR03940, AR03941, AR04308,
9 AR04329, AR04348, AR04396, AR04405, AR04407, AR05286, AR05295, AR05314,
10 AR05323, AR05329, AR05330, AR05331, AR05340, AR05341, AR05347, AR05354,
11 AR05358, AR05410, AR05419, AR05485, AR05486, AR05488, AR05491, AR05492,
12 AR05502, AR05505, AR05507, AR05508, AR05509, AR05514, AR05519, AR05521,
13 AR05524, AR05525, AR05529, AR05538, AR05540, AR05547, AR05552, AR05608,
14 AR05615, AR05628, AR05633, AR05636, AR05637, AR05638, AR05639, AR05641,
15 AR05650, AR05651, AR05652, AR05653, AR05655, AR05659, AR05664, AR05665,
16 AR05667, AR05672, AR05673, AR05677, AR05691, AR05693, AR05708, AR05767,
17 AR05779, AR05780, AR05783, AR05831, AR05932, AR05933, AR05945, AR05982,
18 AR05988, AR06027, AR06032, AR06040, AR06119, AR06234, AR06274, AR06337,
19 AR06364, AR06437, AR06626, AR06633, AR06634, AR06636, AR06704, AR06706,
20 AR06830, AR06837, AR06930, AR06978, AR07002, AR07073, AR07200, AR07693,
21 AR07819, AR07829, AR07844, AR07861, AR07868, AR10091, AR10796, AR10824,
22 AR10832, AR10955, AR10956, AR10958, AR10963, AR10964, AR11148, AR11149,
23 AR11151, AR11156, AR11157, AR11369, AR11370, AR11381, AR11388, AR11618,
24 AR11622, AR11623, AR11657, AR11710, AR11713, AR11720, AR11802, AR11811,
25 AR11812, AR12296, AR12395, AR12408, AR12445, AR12451, AR12490, AR12503,
26 AR12634, AR12680, AR12701, AR12720, AR12785, AR12794, AR12813, AR12897,
27 AR12909, AR12918, AR12928, AR12937, AR13657, AR13659, AR13674, AR13680,
28 AR13802, AR13804, AR13819, AR13825, AR14094, AR14096, AR14111, AR14117,

1 AR14368, AR14370, AR14385, AR14690, AR14692, AR14707, AR14713, AR14922,
2 AR14924, AR14939, AR14945 (“Overflight Complaints”).

3 Facially, the Touch & Go Ordinance regulates specific flight maneuvers that are
4 under the purview of the FAA. Although airport proprietors have limited authority to
5 regulate noise from the airport, the Touch & Go Ordinance makes no reference to noise.
6 Instead, it is a blatant restriction on certain FAA approved flight maneuvers, which
7 amounts to restrictions on flight operations and air safety. Clearly, Congress and the
8 FAA have pervasively regulated these fields. Field preemption applies when the area of
9 aviation commerce and safety implicated is governed by pervasive federal regulations.
10 *Gilstrap v. United Air Lines, Inc.*, 709 F3d 995, 1006 (9th Cir. 2013). Congress has
11 occupied the field of flight operations and safety, which includes the flight maneuvers
12 banned and restricted under the Touch & Go Ordinance. Only the FAA, with the broad
13 authority granted to it by Congress, can ban, restrict, or otherwise regulate the
14 maneuvers. Therefore, the Touch & Go Ordinance is void based on field preemption.

15 2. The Touch & Go Ordinance Is Also Preempted Because It
16 Conflicts with ANCA

17 The Touch & Go Ordinance is further void under conflict preemption because it
18 directly conflicts with ANCA by regulating certain aircraft within its purview. A state
19 or local law is preempted “to the extent of any conflict with a federal statute.” *Hillman*
20 *v. Maretta*, 569 U.S. 483, 490 (2013), citing *Hines v. Davidowitz*, 312 U.S. 52, 66–67
21 (1941); *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and*
22 *Development Comm’n*, 461 U.S. 190, 204 (1983). “Such a conflict occurs when
23 compliance with both federal and state regulations is impossible, or when the state law
24 stands as an obstacle to the accomplishment and execution of the full purposes and
25 objectives of Congress.” *Hillman v. Maretta*, 569 U.S. 483, 490 (2013), citations and
26 quotations omitted. “What is a sufficient obstacle is determined by examining the
27 federal statute and identifying its purpose and intended effects.” *Crosby v. Nat’l Foreign*
28 *Trade Council*, 530 U.S. 363, 363 (2000). When “it undermines the intended purpose

1 and natural effect” of a federal statute, it is such an obstacle. *Id.*, 530 U.S. at 363.

2 In 1990, Congress adopted ANCA because Congress specifically found that
3 “community noise concerns have led to uncoordinated and inconsistent restrictions on
4 aviation that could impede the national air transportation system” and “a noise policy
5 must be carried out at the national level.” 49 U.S.C. §§ 47521(3), (4). ANCA prohibits
6 “airport noise and access restrictions on the operation of stage 2 and stage 3 aircraft”
7 unless those restrictions meet specific statutory requirements, including FAA approval
8 for restrictions on stage 2 and 3 aircraft. 49 U.S.C. § 47524. Stage 3 aircraft use the
9 Airport. *See* Decl. Arnold ¶¶ 5-9. Moreover, it does not specifically exempt stage 4
10 aircraft from its general requirements.

11 The purpose of ANCA was to limit state and local authorities from passing
12 conflicting noise policies and required them to meet strict requirements for passing
13 noise and access restrictions. To implement an access restriction on aircraft within the
14 scope of the ANCA, the City was required to meet explicit requirements for
15 implementing any restrictions. *See* 49 U.S.C. § 47524. For stage 2 aircraft, the City was
16 required to comply with specific noise, economic cost-benefit analysis, and public
17 comment requirements. 49 U.S.C. § 47524(b). This involved publication of notice in a
18 newspaper and written notice to numerous parties, including the FAA. 14 C.F.R.
19 § 161.203. The City was also required to provide analysis of the proposed restriction
20 and alternatives. 14 C.F.R. § 161.205. For stage 3 aircraft, the City was required to meet
21 even stricter requirements. Noise and access restrictions on the operation of stage 3
22 aircraft are only effective if “agreed to by the airport proprietor and all aircraft operators
23 or has been submitted to and approved by the Secretary of Transportation after an
24 airport or aircraft operator’s request for approval...” 49 U.S.C. § 47524(c)(1). This
25 applies to noise restrictions, restrictions on hours of operations, and “any other
26 restriction on stage 3 aircraft.” 49 U.S.C. § 47524(c)(1). The City was also required to
27 submit analysis and satisfy six conditions for the proposed restrictions. 14 C.F.R.
28 § 161.305. Approval by the Secretary of Transportation requires a finding based on

substantial evidence that:

“(A) the restriction is reasonable, nonarbitrary, and nondiscriminatory;

(B) the restriction does not create an unreasonable burden on interstate or foreign commerce;

(C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;

(D) the restriction does not conflict with a law or regulation of the United States;

(E) an adequate opportunity has been provided for public comment on the restriction; and

(F) the restriction does not create an unreasonable burden on the national aviation system.”

49 U.S.C. § 47524(c)(2).⁵ There are also the same notice requirements as stage 2 aircraft restrictions. 14 C.F.R. § 161.303.

a. *The City Failed to Comply with the ANCA*

The federal government permits an airport proprietor to set reasonable noise restrictions on certain stage aircraft, provided those restrictions meet the strict requirements. ANCA expressly refers to access restrictions and not just noise restrictions. This is significant because access restrictions like the City’s Touch & Go Ordinance can be used to limit noise while not specifically referring to noise or noise levels. The Touch & Go Ordinance intended restriction of noise from flying aircraft is only permissible to the extent it does not conflict with and is permitted by ANCA.

Although the Touch & Go Ordinance does not specifically reference noise, it is clear that the City intended it to decrease noise by reducing the frequency of overflights. This is demonstrated by constant complaints and demands by neighbors at public hearings leading up to the adoption of the Touch & Go Ordinance to eliminate or severely limit aircraft overflight. *See* Pattern Complaints and Overflight Complaints, Section VII.C.1., *supra*. But aircraft noise is regulated by ANCA for certain staged

⁵ This standard aligns with the standard for judicial review of agency actions under 5 U.S.C. § 706, that ZAPS believes should apply here.

1 aircraft. However, the Touch & Go Ordinance makes no distinction as to the stage of
2 aircraft it applies to, so it applies to all stages. Restrictions on stage 2 and 3 aircraft are
3 expressly subject to ANCA's requirements. Even if the City were to expressly exclude
4 stage 2 and 3 aircraft, the Touch & Go Ordinance would still be unenforceable because
5 that would create an exclusive right for the aircraft allowed to conduct the otherwise
6 prohibited maneuvers, in violation of 49 U.S.C. section 40103(e).

7 The City failed to comply with any of ANCA's requirements for regulating stage
8 2 and 3 aircraft noise. Nothing in the Administrative Record evidences that the City
9 complied with these requirements. In fact, the City's own analysis of ANCA
10 compliance admits that it would not be able to pass an ANCA compliant ordinance that
11 restricted stage 2 and 3 aircraft. AR04386. Significantly, the City staff stated that for
12 the regulation of stage 3 aircraft: "It should be noted that condition 6 (that the restriction
13 will not create an undue burden on the national aviation system) will be challenging for
14 the City to overcome as any prohibition on training flights at the Airport will cause
15 congestion at the nearby airports (LAX, John Wayne, and Long Beach)." AR04386.
16 Staff further noted that: "The ANCA approval process is extremely costly, lengthy, and
17 challenging, and as far as the Stage 3 restriction, no airport has been successful in
18 getting it approved by the FAA." AR04386. The City has expressly admitted that the
19 Touch & Go Ordinance fails to comply with ANCA for stage 2 and 3 aircraft.

20 The City did not secure FAA approval to regulate stage 3 aircraft nor comply
21 with the requirements for regulating stage 2 aircraft. *See* 49 U.S.C. §§ 47524(b), (c).
22 Stage 3 aircraft operate at the Airport and are subject to the restrictions of the Touch &
23 Go Ordinance. The public, including members of ZAPS, operate stage 3 aircraft at the
24 Airport. Decl. Arnold, ¶ 5. The Touch & Go Ordinance directly conflicts with ANCA
25 because it regulates stage 3 aircraft without obtaining FAA approval. The restrictions
26 regulate stage 2 aircraft, which currently use the Airport, or may use it in the future.
27 Accordingly, the Touch & Go Ordinance is preempted because it conflicts with the
28 express provisions of ANCA.

b. Labeling the Flight Restriction as a “Safety-Based
Restriction” Does Not Prevent Preemption

The City knew it would not be permitted to pass an ordinance like the Touch & Go Ordinance since it would not be compliant with ANCA. AR04386. City staff expressly determined that the City could not comply with the ANCA for the passage of the Touch & Go Ordinance. *Id.* So instead, it merely labeled the ordinance a “safety-based restriction” in order to adopt a restriction that directly conflicted with ANCA. AR04386-87. This is form over function. The City cannot escape the requirements of ANCA for restrictions that are clearly intended to address noise from flying aircraft. Moreover, only the FAA regulates safety. The City has no power to regulate flight maneuvers based on safety.

This creative labeling does not alleviate the fact that the Touch & Go Ordinance undermines the intended purpose of ANCA and is therefore “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hillman*, 569 U.S. at 490. Just because the City does not wish to follow ANCA procedures, does not mean that ANCA does not apply. By not following those procedures and restricting stage 3 aircraft, the Touch & Go Ordinance is in express conflict with the intended purpose of the ANCA. The City cannot escape the requirements of the ANCA merely by labeling it a “Safety-Based Restriction”. It is still a noise-based restriction on aircraft operations. This is highlighted by the swell of public concern fomented in the adoption of the Touch & Go Ordinance to limit the noise and frequency of aircraft overflight, not for safety.

**D. Local Noise Restrictions that Limit Aircraft Operations Are
Consistently Held to Be Preempted by Courts**

There are numerous instances where federal courts have invalidated local restrictions on aircraft flight operations. Local municipalities and entities have tried to come up with creative ways to limit aircraft flight operations, while stating that they do not regulate flight operations. As noted by one court, “The defendant cannot credibly

1 argue that because the ordinance limits takeoffs and landings, but not flight paths, it is
2 not a regulation on flight operations. It is difficult, if not impossible, to draw a
3 distinction between regulation concerning the ‘flight’ of aircraft and regulation
4 concerning the takeoff and landing of aircraft.” *Price v. Charter Tp. of Fenton*, 909
5 F.Supp 498, 503 (E.D. Mich. 1995). As stated in *City of Burbank*, “[t]he moment a ship
6 taxis onto a runway it is caught up in an elaborate and detailed system of controls.” *City*
7 *of Burbank*, 411 U.S. at 634.

8 Federal courts, in the wake of *Burbank*, have held that various attempts by local
9 governments to enforce their police powers to control noise or otherwise affect flights
10 are preempted. The key determinate for when an ordinance is preempted under federal
11 law is when a noise restriction affects flights at an airport. Federal courts throughout
12 the land have invalidated local ordinances based on preemption when they affect flight at
13 an airport. *Price v. Charter Tp. of Fenton*, 909 F.Supp 498 (E.D. Mich. 1995
14 (horsepower of aircraft and frequency of flights preempted); *Blue Sky Entertainment,*
15 *Inc. v. Town of Gardiner*, 711 F.Supp 678 (N.D.N.Y. 1989) (decibel levels and flight
16 paths of airplanes preempted); *United States v. City of Blue Ash*, 487 F.Supp. 135
17 (S.D.Ohio 1978) (noise abatement turns preempted); *Command Helicopter, Inc. v. City*
18 *of Chicago*, 691 F.Supp 1148, (N.D.Ill. 1988) (lifting operations by helicopters
19 preempted); *Gustafson v City of Lake Angelus*, 856 F.Supp. 320 (E.D.Mich. 1983)
20 (storage, landing, and flight altitude of aircraft preempted).

21 The City’s Touch & Go Ordinance, by regulating touch and goes and similar
22 flight maneuvers, is a regulation that affects overflight. The City was previously warned
23 by the FAA that its prior restrictions on aircraft operations, including its Left Turn Ban
24 are unenforceable and preempted. AR10065-10067, AR10082-10084. Specifically, the
25 FAA stated that:

26 “[S]tate and local governments lack the authority to regulate airspace
27 use, management and efficiency; air traffic control; and aircraft noise
28 at its source. Federal courts have found that a navigable airspace free
from inconsistent state and local restrictions is essential to the
maintenance of a safe and sound air transportation system.”

1 AR10066. In a follow-up letter the FAA stated that the Left Turn Ban was
2 impermissible regardless of the times it is enforced. AR10084. However, the City's
3 correspondence with the FAA was generally dismissive of the FAA's authority to
4 regulate aircraft flight operations. AR10077-81. This dismissive view has lead to the
5 City's assault on aircraft flying near the Airport through a series of restrictive laws that
6 culminated in the adoption of the Touch & Go Ordinance.

7 **E. The Proprietor Rights Exception Is Insufficiently Broad to Validate**
8 **the Touch & Go Ordinance**

9 The Touch & Go Ordinance pretends to regulate noise from the Airport to hide
10 its improper purpose to reduce noise from aircraft overflight. "The federal government
11 regulates aircraft and airspace pervasively, preempting regulation of aircraft noise by
12 state or local governments." *City & Cnty. of San Francisco v. F.A.A.*, 942 F.2d 1391,
13 1394 (9th Cir. 1991). Congress only reserved "a **limited** role for local airport proprietors
14 in regulating noise levels at their airports." *Id.* Emph. added. This exception "allows
15 municipalities to promulgate reasonable, nonarbitrary and non-discriminatory
16 regulations of noise and other environmental concerns at the local level." *Nat'l*
17 *Helicopter Corp. of Am. v. City of New York*, 137 F.3d 81, 88 (2d Cir. 1998), citations
18 and quotations omitted. Further, in the years since *City of Burbank*, Congress and the
19 FAA have limited the authority of airport proprietors to restrict aircraft operations
20 through the adoption of ANCA and the FAA's enforcement of the AAIA grant
21 assurances. *See Arapahoe County Pub. Airport Auth. v. FAA*, 242 F.3d 1213, 1220-21
22 (10th Cir. 2001) (affirming FAA decision that local ban on scheduled passenger
23 operations violated FAA grant obligations); *City of Santa Monica v. FAA*, 631 F.3d
24 550 (D.C. Cir. 2011) (ban on certain aircraft to address local safety concerns violated
25 FAA grant obligations). These demonstrate the FAA's concerted effort to limit a
26 proprietor's power to restrict flight operations. And although the Airport does not
27 currently have effective grant-based assurance, that does not mean the City has any
28 greater proprietary rights. There is an express statutory prohibition on exclusive rights,

1 which also appears in the grant assurances requirements. *See* 49 U.S.C. § 40103(e).
2 Furthermore, the FAA explicitly told the City that its proprietary powers would need to
3 comply with ANCA. AR05806; AR05817-08; AR10066.

4 The City cannot restrict flight operations such as flight maneuvers and pattern
5 flight. This is tantamount to restricting the routes of aircraft. The City does not have the
6 unilateral authority to restrict aircraft flight operations to address noise and emissions
7 concerns since “[t]he proprietor exception, allowing reasonable regulations to fix noise
8 levels at and around an airport at an acceptable amount, gives no authority to local
9 officials to assign or restrict routes.” *Nat’l Helicopter Corp. of Am. v. City of New York*,
10 137 F.3d 81, 92 (2d Cir. 1998). The use of an airport operator’s proprietary powers is
11 only permitted when it is narrowly tailored. In *Santa Monica Airport Ass’n v. City of*
12 *Santa Monica*, 659 F.2d 100, 104 (9th Cir. 1981), the Ninth Circuit upheld a 100 dB
13 single event noise exposure level (“SENEL”) regulation for takeoff and landing under
14 the municipal operator’s proprietor exception. *Id.* It found that “the City’s SENEL
15 system was one of the most direct, effective and least costly methods of monitoring and
16 regulating noise.” *Id.* at 105. And that “the SENEL ordinance did not regulate airspace
17 or flight.” *Id.* The Ninth Circuit believed that the restriction was reasonable,
18 nonarbitrary, and nondiscriminatory since it expressly regulated noise levels, was the
19 most direct, effective, and least costly method, and applied to all aircraft based on
20 objectively measured noise levels. However, this case was decided before Congress
21 adopted ANCA, which likely constrains the breadth of its holding. The current extent
22 of proprietary powers is reflected in *Nat’l Helicopter Corp. of Am.*, which was decided
23 after ANCA. Moreover, proprietary powers never extended to regulation of routes,
24 which is prohibited. *Am. Airlines, Inc. v. Dep’t of Transp.*, 202 F.3d 788, 806-07 (5th
25 Cir. 2000), citing *Nat’l Helicopter Corp. of Am.*, 137 F.3d at 91-92.

26 In contrast to permissible regulations, the City’s Touch & Go Ordinance makes
27 no mention of specific noise levels and flat out reduces flights within the navigable
28 airspace. The City’s intent in adopting the ordinance was to reduce noise and frequency

1 of aircraft in the traffic pattern above the Airport.⁶

2 The proprietor's rights exception never permitted an airport operator to restrict
3 flight operations in a traffic pattern. The City is only permitted to adopt "reasonable,
4 nonarbitrary and non-discriminatory regulations of noise and other environmental
5 concerns at the local level." The Touch & Go Ordinance fails to meet this standard in
6 all regards. It is not a reasonable restriction like the one in *Santa Monica Airport Ass'n*.
7 It is arbitrary and discriminatory against flight schools who frequently implement the
8 Flight Maneuvers for training purposes and is not a noise or environmental restriction—
9 instead, it unabashedly regulates aircraft flight operations with the intended goal of
10 reducing aircraft overflight. The Touch & Go Ordinance is not a reasonable noise
11 restriction because it does not affix any noise levels for the operation of aircraft. The
12 City's proprietor rights exception cannot validate the Touch & Go Ordinance and thus
13 void and preempted.

14 **F. The Savings Clause Is Not Applicable Because it Only Preserves**
15 **Remedies**

16 Although the Federal Aviation Act does contain a "savings clause", it is limited
17 in nature. "A remedy under this part is in addition to any other remedies provided by
18 law." 49 U.S.C. § 40120. The savings clause is a general remedy savings clause that
19 preserves pre-existing statutory and common law remedies. *Nat'l Fed'n of the Blind v.*
20 *United Airlines Inc.*, 813 F.3d 718, 730-31 (9th Cir. 2016).

21 The inclusion of a savings clause in a statute does not limit the operation of
22 implied or conflict preemption. *Nat'l Fed'n of the Blind*, 813 F.3d at 731-33; *Gilstrap*
23 *v. United Air Lines, Inc.*, 709 F.3d 995, 1006 (9th Cir. 2013) (state remedies survive if
24 standard of care is preempted by federal law). Since the Touch & Go Ordinance is
25 preempted by federal law, the savings clause would not apply. And even if it is not
26 preempted, the savings clause would not prohibit voiding the ordinance since that clause
27 _____

28 ⁶ See Section VII.B., *supra*, and VII.G., *infra*, regarding the City's improper purpose.

1 only preserves remedies, not the City's ability to adopt impermissible restrictions on
2 flight operations.

3 **G. The City Adopted the Touch & Go Ordinance for the Improper**
4 **Purpose of Limiting Aircraft Overflight**

5 An ordinance adopted for an improper purpose is void. *Graber v. City of Upland*,
6 99 Cal.App.4th 424, 433-35 (Ct. App. 2002). The Court is permitted to inquire into the
7 motive and purpose of the City's adoption of the Touch & Go Ordinance because it was
8 adopted for an improper purpose. In *Stahm v. Klein*, the California Court of Appeals,
9 quoting *American Jurisprudence*, Volume 11, pages 818 to 820, stated:

10 "The rule as to the inapplicability of legislative motive or interest to
11 invalidate enactments is subject to the established exception that such
12 matters may be gone into by the courts to the extent that they may be
13 disclosed on the face of acts or may be inferable from their operation.
14 Both the rules and the exception are examples of the general doctrine
15 heretofore discussed that since the purpose of a statute should be
16 determined from the natural and legal effect of the language employed,
17 whether it is repugnant to the Constitution must therefore be determined
18 from its natural effect when put into operation, and not from its
19 proclaimed purpose.

20 "The general prohibition against inquiry as to the motives of the
21 legislators applies to acts of Congress, to laws enacted by the state
22 legislatures, and to ordinances and bylaws passed by municipal
23 corporations."

24 *Stahm v. Klein*, 179 Cal.App.2d 512, 520 (Ct. App. 1960) (citing numerous United
25 States Supreme Court and California Supreme Court cases in support of this exception);
26 *see also Trujillo v. City of Los Angeles*, 276 Cal.App.2d 333, 338 (Ct. App. 1969). Other
27 jurisdictions also permit the inquiry into an improper purpose of a legislative act. *See*
28 *Township of Readington v. Solberg Aviation Co.*, 409 N.J. Super. 282, 315-16 (App.
Div. 2009) (condemnation initiated for the improper purpose to secure Township
control over airport operations would not be permissible). Therefore, this Court is
permitted to, and should, look into the City's motivation and purpose of adopting the
Touch & Go Ordinance. As discussed above in detail, the voluminous public complaints
spurred the City to adopt the Touch & Go Ordinance to limit aircraft overflight of
complaining neighborhoods.

1 **H. The City Violated an Express Covenant of the Federal Government's**
2 **Deed for the Airport**

3 The Deed to the Airport includes an express covenant that the City “shall not
4 prevent any use of land either within or outside the boundaries of the airport...or
5 otherwise limit its usefulness as an airport.” AR00005. The City’s adoption of the Touch
6 & Go Ordinance is contrary to this express covenant. Therefore, the Touch & Go
7 Ordinance is further ineffective since the City had no legal right under its Deed to
8 restrict flight maneuvers.

9 **I. The Touch & Go Ordinance Is Invalid, So this Court Should Issue a**
10 **Writ of Mandate or Equivalent Declaratory and Injunctive Relief**

11 As discussed above, the Touch & Go Ordinance is preempted by federal law. The
12 City has no legal right to regulate flight operations and the City’s actions were for the
13 improper purpose of limiting aircraft in the traffic patterns for the Airport. The City
14 cannot rely on its proprietor’s rights because the Touch & Go Ordinance is
15 unreasonable, arbitrary, discriminatory, and was not adopted to control noise levels
16 emanating from the Airport itself. Because of this, the City has exceeded its authority.

17 Also, the City failed to follow the proper procedures under ANCA to regulate
18 stage 3 aircraft under the Touch & Go Ordinance. The overwhelming evidence from the
19 Administrative Record demonstrates that the City’s motivation was to limit aircraft
20 overflight in the North and South patterns. Therefore, this Court should issue a writ of
21 mandate and/or declaratory judgment that the Touch & Go Ordinance is invalid and
22 issue an injunction prohibiting the City from enforcing the Touch & Go Ordinance.

23 **VIII. CONCLUSION**

24 The City adopted the Touch & Go Ordinance to unlawfully regulate aircraft
25 overflight. It sought to limit the frequency of flights in the traffic patterns by banning
26 touch-and-go and stop-and-go flight maneuvers and restricting low pass and taxi-back
27 maneuvers. Regulation of these flight maneuvers and the navigable airspace is clearly
28 within the sole purview of the federal government and the FAA.

1 The Touch & Go Ordinance is preempted because the federal government has
2 exclusive sovereignty over navigable airspace. This includes takeoffs and landings
3 since they are part of the traffic pattern managed and controlled by the air traffic
4 controller. The federal government retains the full extent of this sovereignty limited
5 only by what Congress has expressly ceded to the states through legislation. The
6 authority to regulate the flight maneuvers have not been ceded, so the Touch & Go
7 Ordinance is preempted by federal law.

8 Further, the federal government has preempted the fields of air safety and flight
9 operations, which encompass regulation of the flight maneuvers, which are expressly
10 acknowledged by the FAA as legitimate maneuvers for the safe training of pilots. The
11 Touch & Go Ordinance also conflicts with ANCA, and the City failed to comply with
12 ANCA's requirements, so it is further preempted under conflict preemption.

13 Faced with numerous complaints and demands to ban or severely limit aircraft
14 overflight, the City adopted the Touch & Go Ordinance as a means to an improper end.

15 Accordingly, ZAPS requests that the Court issue a writ of mandate or equivalent
16 declaratory judgment that the Touch & Go Ordinance is invalid and issue an injunction
17 prohibiting the City from enforcing the Touch & Go Ordinance against aircraft using
18 the Airport.

19
20 DATED: April 28, 2025

ORBACH HUFF & HENDERSON LLP

21
22 By: /s/ Stan M. Barankiewicz, II.

23 Stan M. Barankiewicz II
24 Christopher M. Wolcott
25 Attorneys for Plaintiff/Petitioner
26 ZAMPERINI AIRFIELD PRESERVATION
27 SOCIETY
28

CERTIFICATE OF SERVICE

I certify that counsel of record who are deemed to have consented to electronic service are being served on April 28, 2025 with a copy of this document via the court's CM/ECF system pursuant to Local Rule 5-3.2.1.

/s/ Stan M. Barankiewicz, II.
Stan M. Barankiewicz II, Esq

ORBACH HUFF & HENDERSON LLP

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff/Petitioner Zamperini Airfield Preservation Society, certifies that this brief contains thirty-five pages, which complies with the page limit set by court order dated January 22, 2025.

Dated: April 28, 2025 /s/ Stan M. Barankiewicz, II.
Stan M. Barankiewicz II, Esq

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